

REMARKS

After entry of the present amendment, claims 1-24 are pending in the Application.

Support for the recitation of particle size and water absorption in amended claim 1 can be found at least in original claim 4.

Support for new claim 23 reciting specific types of dietary fiber (cellulose, microcrystalline cellulose, resistant starch, bran, lignin, wheat fiber, pea fiber and mixtures thereof) can be found in the specification at least at page 17, lines 10-11, page 17, lines 22-24 and page 19, lines 10-12.

Support for new claim 24 reciting specific types of dietary fiber (oat bran, barley bran, psyllium, hemicellulose, carboxymethylcellulose, hydroxypropyl methylcellulose, methylcellulose, pectin, inulin, guar gum, locust bean gum, xanthan gum, gellan gum, gum arabic, gum tracacanth, gum karaya, arabinogalactan, beta glucan and mixtures thereof) can be found in the specification at least at page 17, lines 5-9.

This Amendment is also intended to provide summaries of the telephonic conversation between the Examiner, inventor Bob Prosis, attorney Wendy Seffrood and the undersigned on September 15, 2003, as well as conversations between the Examiner and the undersigned on September 22, 2003; September 24, 2003 and September 29, 2003. During the initial interview, the Examiner and other participants agreed that, among other things, the prior art of record does not teach or suggest "fiber having a particle size of less than 150 microns and a water absorption less than 7.0 grams per gram of fiber."

The subsequent conversations on September 22, 2003, September 24, 2003 and September 29, 2003 between the Examiner and the undersigned, concerned the information disclosure statement (IDS) being filed herewith, as well as product and experimental testing and data. On September 22, 2003, the Examiner and the undersigned discussed the best manner by which the IDS should be filed and considered for Application Nos. 09/828,016, 09/827,863, 09/828,018, 09/827,802, 09/828,015 and 09/827,436, each of which was filed on April 6, 2001 and each of which is owned by the assignee of the present application. Pursuant to this conversation, the IDS was first filed on September 23, 2003 and considered by the Examiner for the present application. On September 24, 2003, the Examiner indicated that none of the references cited in this IDS was more relevant than the references she had cited. The Examiner,

however, indicated that Applicant should resubmit the IDS with a new transmittal letter. Accordingly, it is being refiled herewith.

On September 24, 2003 and September 29, 2003, the undersigned and the Examiner discussed the tests conducted by the original owner of the application, namely, Procter & Gamble (P&G). The undersigned indicated that P&G conducted a variety of tests while developing and experimenting with the subject matter of the present application. P&G conducted these tests, and later filed this application, before Michael, Best & Friedrich LLP (MBF) assumed responsibility for the prosecution of this application on behalf of the current assignee. In other words, MBF was not directly involved in designing or conducting these tests, evaluating the data, or preparing the application. The undersigned met with representatives of P&G to discuss the tests and the data obtained therefrom.

Because of the volume of the test data, it was decided that the undersigned would submit a representative sample of each type of test and data as the undersigned understood it. A representative Example of each of the following categories (except for G) was sent to the Examiner for inclusion in the present application's file, and then discussed with the Examiner on September 29, 2003.

A. Non-P&G Employee Blind Taste Tests. Taste samples were provided to panelists outside of P&G. Panelists were asked to eat as much of the test sample as they wished, to form a definite opinion of the product, and to rate their opinion of the overall taste (e.g. flavor, texture, etc.) of the test sample. The concept was not disclosed to the panelists. As used herein, the term "concept" refers to the notion of developing "nutritionally balanced" good-tasting snacks. No other information or product description was given to or retained by the panelists. These were strictly blind taste tests. Examples of facilities at which this test, as well as the other tests listed below, were conducted include churches and schools.

B. P&G Employee Home Use Tests. Taste samples were given to P&G employees and their families for household use. Therefore, a strong expectation of secrecy existed. It is the undersigned's understanding that the most, if not all, of these samples did not meet at least one of the requisite protein, fiber or fat requirements for a "nutritionally balanced" food. Brief instructions and an evaluation form were distributed to the panelists.

C. Non-P&G Employee Concept Tests with Confidential Disclosure Agreement (CDA).

These tests were conducted over the Internet, but with security measures. More particularly, CDAs, firewalls, and/or passwords were used. The concept and accompanying details were then disclosed to panelists, and their reactions were recorded. An example CDA is shown in the document marked "C". The panelists did not retain any tangible information.

D. Non-P&G Employee Concept Tests without CDA. Outside panelists were exposed to a concept statement and different food profiles. However, most, if not all, of the profiles fell outside each of the claimed ranges of protein, fat and fiber. The panelists' reactions to the concept were recorded, but the panelists did not retain any tangible information.

E. Non-P&G Employee Concept and Taste Tests with CDA. Outside panelists were exposed to a concept statement and different food profiles. The panelists executed CDAs. An example CDA is attached to the document marked "E." Some of the food profiles may have fallen within the claimed ranges of protein, fat and fiber. The panelists' reactions to the concept were recorded, but the panelists did not retain any tangible information.

F1. Appearance Test. Panelists were asked to view a snack display, and indicate how well they liked or disliked the appearance (shape and size) of the new snack. The concept and profile were not disclosed. The results were recorded.

F2. Flavor Selection Test. Panelists were presented with a list of various flavor ideas for a new snack. A very generic description of the new snack accompanied a questionnaire. The profile was not given. The questionnaires comprised a list of flavor ideas. Panelists were asked to provide their opinion on the flavor ideas.

G. Non-P&G Employee Home Use Tests with CDA. Taste samples were given to non-P&G employees for household use under a CDA. No concept or description was disclosed. This was a blind taste test.

H. Heart and Diabetic Concept Tests. Recruited P&G employees having heart and/or diabetic health concerns were given nutritional-fact sheets of different snacks under an expectation of privacy. The employees were not allowed to take the sheets home. The employees' reactions to the fact sheets were recorded.


I. Non-P&G Employees Comparative Description Concept Tests. Panelists outside of P&G were provided with a description of nutritionist-formulated snacks having natural ingredients and being golden baked for a deliciously enjoyable taste. The actual amounts of calcium, protein, fiber, carbohydrates, fat etc. that the snacks comprised were not disclosed. Instead, the actual amounts of these components were compared to other food items. For example, the amount of calcium was identified as being "as much as a glass of milk," the amount of fiber "being as much an apple," and so on. The panelists did not retain any tangible information. Some of these disclosures were made under a CDA; some were not. The particle size and water absorption characteristics were not disclosed.

Based on the Examiner's review of the Examples of the above categories sent to the Examiner, and the undersigned's description of each of the above categories as substantially set forth above, the Examiner concluded that none of the above subject matter constituted prior art. More particularly, the Examiner concluded that the above activities did not rise to the level of public use. Accordingly, because this information does not constitute prior art, this information has not been cited in an information disclosure statement. However, copies of the examples have been sent to the Examiner for inclusion in the file of the present application, in order to satisfy the duty of disclosure under 37 C.F.R. § 1.56. Because the representative samples do not constitute prior art, it was agreed that it was unnecessary to submit the remaining test data, which is merely cumulative.

CONCLUSION

In view of the foregoing, allowance of the application is respectfully requested. Again, the undersigned wishes to thank the Examiner for her time and effort spent favorably considering the application.

Respectfully submitted,



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